National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information	Washington, D.C. 20570	Tel. (202) 273-1991
June 16, 2006		W-3056

<u>CASES SUMMARIZED</u> VISIT WWW.NLRB.GOV FULL TEXT

American Red Cross Missouri-Illinois Blood Services Region	St. Louis, MO	1
Kvaerner Philadelphia Shipyard, Inc.	Philadelphia, PA	1
St. Francis Medical Center	Lynwood, CA	2
U-Haul Co. of California	Fremont, CA	3

OTHER CONTENTS

List of Decisions of Administrative Law Judges	15
List of Unpublished Board Decisions and Orders in Representation Cases	17

- Contested Reports of Regional Directors and Hearing Officers
- Uncontested Reports of Regional Directors and Hearing Officers
- Requests for Review of Regional Directors' Decisions and Directions of Elections and Decisions and Orders

The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information and is available on a paid subscription basis. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Division of Information has prepared them for the convenience of subscribers.

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site (www.nlrb.gov). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing the Information Division, 1099 14th Street, NW, Suite 9400, Washington, DC 20570 or fax your request to 202/273-1789. As of August 1, 2003, Administrative Law Judge decisions are on the Web site.

All inquiries regarding subscriptions to this publication should be directed to the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, 202/512-1800. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

American Red Cross Missouri-Illinois Blood Services Region (14-CA-27956, 14-RC-12500; 347 NLRB No. 33) St. Louis, MO June 5, 2006. The Board adopted the administrative law judge's findings that the Respondent, in response to Teamsters Local 682's organizing campaign, violated Section 8(a)(1) of the Act by coercively interrogating employee Judy Allen and violated Section 8(a)(3) and (1) by isolating employees Jerri Thompson, Nicole Bishop, and Catherine Pendleton because of their union activities. Chairman Battista and Member Liebman additionally found that the Respondent unlawfully harassed Thompson because of her protected activities and the adverse testimony she gave at the representation hearing. Member Schaumber dissented from this finding. [HTML] [PDF]

Chairman Battista and Member Schaumber (1) affirmed the judge's dismissal of the allegation that the Respondent threatened to freeze wages; (2) reversed the judge's finding that the Respondent violated Section 8(a)(1) by soliciting employees' grievances; (3) agreed with the judge that the Respondent did not maintain an overly broad no-solicitation policy; and (4) overruled Objection 14, unlike the judge who sustained the objection in part. Member Liebman dissented from the dismissal or overruling of all four of these allegations.

The Board set aside the election of July 8, 2004, based on the Respondent's unfair labor practices and directed that a second election be held. The tally of ballots showed 102 for and 118 against, the Union, and 1 nondeterminative challenged ballot. The Union filed timely objections: 5 were withdrawn, 8 were coextensive with the unfair labor practice allegations, 2 were sustained, and the remaining objections were overruled consistent with the decision to dismiss the corresponding unfair labor practice allegations.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Teamsters Local 682; complaint alleged violation of Section 8(a)(1) and (3). Hearing at St. Louis, Nov. 29 through Dec. 2, 2004. Adm. Law Judge Bruce D. Rosenstein issued his decision Feb. 14, 2005.

Kvaerner Philadelphia Shipyard, Inc. (4-CA-32182; 347 NLRB No. 36) Philadelphia, PA June 9, 2006. Chairman Battista and Member Schaumber affirmed the administrative law judge's deferral to the arbitrator's decision and dismissed the complaint allegation that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee William Smith because he engaged in concerted protected activities. Dissenting, Member Liebman would not defer to the arbitrator's award, because in her view, it was palpably wrong and repugnant to the Act. She would find that the Respondent unlawfully discharged Smith on the basis of his exercise of protected concerted activities, as alleged. [HTML] [PDF]

On June 1, 2003, Smith, a former shop steward, addressed a letter to all employees questioning the Respondent's deductions for union dues and medical and dental benefits from their paychecks when there are 3 pay periods in a month like May 2003. He claimed that union dues, medical and dental are set amounts that the Respondent takes out in two payments each

month. Later that day, Smith was fired. Although asserting that he would find the discharge unlawful, the judge determined that the arbitrator's decision was not palpably wrong and thus deferral was appropriate under Board law.

Chairman Battista and Member Schaumber, in affirming the judge's deferral finding, did not pass on his finding that Smith was, in fact, discharged for engaging in protected activity. They concluded that the arbitrator adequately addressed the components of the unfair labor practice allegation and found that Smith lost the protection of the Act because he had acted with reckless disregard for the truth, with the intent to incite employee distrust of the Respondent and to defame the Respondent. The majority observed that in finding the arbitrator's decision was not palpably wrong, the judge wrote: "Smith went further, however, than merely voice his erroneous assumptions. He also queried what the company was doing with the extra money, and stated that the 'extra money being taken out of your pocket . . . is probably being put into a bank earning interest' . . . Clearly, his erroneous accusations about the Company's ill-gotten gains was both, unnecessary to his stated purpose and, therefore, inflammatory."

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by William Smith, an Individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Philadelphia on Dec. 15, 2004. Adm. Law Judge Karl H. Buschmann issued his decision Feb. 23, 2005.

St. Francis Medical Center, an operating division of Catholic Healthcare West Southern California Region (21-CA-33315; 347 NLRB No. 35) Lynwood, CA June 6, 2006. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(1) of the Act by refusing to remove from various work areas flyers that disparaged and personally attacked employee Heang Botelho because of her union activities. The Board relied solely on the judge's finding that supervisor Luis Carillo took no action in response to Botelho's complaint when Botelho saw the flyers posted throughout the workplace. [HTML] [PDF]

Contrary to the judge, the Board held that the Respondent did not violate Section 8(a)(1) by disparately enforcing its no-solicitation, no-distribution rule as to posting materials in the workplace. It found that the General Counsel did not produce any evidence that the Respondent had acted disparately in regard to what else it permits to be posted. Without this predicate against which to compare the Respondent's actions regarding posting in this case, the Board reasoned that it cannot find that the Respondent disparately enforced a no-solicitation no-distribution against union supporters as alleged in the complaint.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Service Employees Local 399; complaint alleged violation of Section 8(a)(1). Hearing at Los Angeles, March 16-17, 2000. Adm. Law Judge Mary Miller Cracraft issued her decision Dec. 15, 2000.

U-Haul Co. of California (32-CA-20665-1; 346 NLRB No. 34) Fremont, CA June 8, 2006. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging Michael Warren and Andrew Johnson because of their union and protected concerted activities. [HTML] [PDF]

Members Liebman and Schaumber agreed with the judge that the Respondent violated Section 8(a)(4) and (1) by maintaining a mandatory arbitration policy as a condition of employment with Respondent. The judge found that the arbitration policy, as stated, violated the Act because it would reasonably tend to inhibit employees from filing charges with the Board. Specifically, the judge found that the phrase "any other legal or equitable claims and causes of action recognized by local, state, or federal law or regulations" reasonably includes the filing of unfair labor practice charges with the Board, and thus employees could reasonably believe that they are precluded from filing such charges with the Board. Dissenting, Chairman Battista would find that the policy is not unlawful. He contended that there is no evidence that the rule has been applied to the protected activity of invoking Board processes, that there is no evidence that it was intended to apply to such activity, and that the policy does not explicitly bar any Section 7 activity.

The judge found that the Respondent violated Section 8(a)(1) when its shop manager, Chip Thorn, during an employee meeting, asked Warren, "What do you know about the Union in Vegas, Warren?" The judge relied on the fact that the questioning took place in front of 30 employees, that in that meeting Thorn also expressed an opinion that employees would gain nothing by union representation, and that Thorn discharged Warren and Johnson shortly after the interrogation.

Chairman Battista and Member Schaumber reversed the judge, finding that neither the subject matter of Thorn's question, nor the circumstances in which it was asked, was coercive. They said that Thorn's question, about an event at a different location, was the subject of literature that Warren had openly distributed, that the question was not about Warren's union activity, and Warren was not asked to reveal his union sentiments or those of his fellow employees. Contrary to her colleagues, Member Liebman wrote that "a careful examination of the circumstances demonstrates that, in each instance, the Respondent's action reasonably tended to coerce employees in the exercise of their Section 7 rights." In her view, Warren was singled out for questioning about union activity, by the shop's highest-ranking manager, before 30 other employees in a mandatory meeting—and was unlawfully fired soon afterward.

Chairman Battista and Member Schaumber also reversed the judge's finding that the statement in the Respondent's employee handbook ". . . if your supervisors cannot resolve your problems, you are expected to see me" violated Section 8(a)(1). The judge asserted that the statement would reasonably be interpreted by employees as requiring them to resolve their workplace problems through internal measures rather than by exercising rights guaranteed them by Section 7 of the Act. However, the majority maintained that the judge erred in reading the disputed statement in isolation, rather than considering it in the context in which it appears. The

statement appears in the same paragraph, and immediately follows, the Respondent's assertion that its employees "can speak up for yourselves at all levels of management" and that it will "listen" and do its best to give them a "responsible reply."

The majority reasoned that the statement that employees "can speak up for yourself" invites, but does not require, the presentation of workplace problems to management. They further contended that even if the disputed statement could be read as a direction to employees to present their workplace problems to the Respondent's managers, or at least an encouragement to do so, the handbook does not foreclose employees from also using other avenues (e.g., the union, fellow employees, the NLRB).

Member Liebman agreed with the judge that the Respondent unlawfully interfered with employees' right to seek redress of employment problems through protected concerted activities by maintaining a policy implicitly prohibiting resolution of employee complaints through entities other than the Respondent's supervisory hierarchy. In addressing the rule in the employee handbook requiring employees to report work-related complaints to management, she wrote: "while the Respondent's statement does not explicitly threaten disciplinary action, there is an implicit threat of adverse consequences if employees do not meet the Respondent's 'expectation' that they first discuss complaints with their supervisor and Shoen."

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Machinists Lodge 190, Local 1173; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Oakland, Oct. 15-17 and 22-23, 2003. Adm. Law Judge Jay R. Pollack issued his decision Feb. 6, 2004.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

T. Steele Construction, Inc. (Operating Engineers Local 150) Rock Island, IL June 5, 2006. 33-CA-14914; JD-38-06; Judge Paul Bogas.

Parrotkeat Enterprises, Inc., d/b/a BG Electronics (Electrical Workers [IBEW] Local 134) Schaumburg, IL June 7, 2006. 13-CA-42950; JD-40-06, Judge David I. Goldman.

Brighton Retail, Inc. (an Individual) Scottsdale, AZ June 7, 2006. 28-CA-20323; JD(SF)-32-06, Judge Jay R. Pollack.

Sysco Food Services of Cleveland, Inc., (an Individual) Cleveland, OH June 7, 2006. 8-CA-35780; JD-39-06, Judge David I. Goldman.

John T. Jones Construction Co., Inc. (Carpenters District Council of Kansas City & Vicinity) Springfield, MO June 8, 2006. 17-CA-22607, et al.; JD(SF)-33-06, Judge Lana H. Parke.

Day Automotive Resources, Inc., d/b/a Day Automotive Group and Centennial Chevrolet, Inc. (Steel, Paper and Forestry Workers [Steel Workers] Local 13836-03) Uniontown, PA June 9, 2006. 6-CA-34843, 34895; JD-41-06, Judge Richard A. Scully.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Wickliffe Country Place, Cleveland, OH, 8-RC-16732, June 7, 2006 (Chairman Battista and Members Liebman and Walsh)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Anchor Construction Co., Gretna, NE, 17-RC-12418, June 7, 2006 (Chairman Battista and Members Liebman and Walsh)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Entercom Boston LLC, Brighton, MA, 1-RD-2071, June 6, 2006 (Chairman Battista and Members Liebman and Walsh)

Raintree Construction, Inc., Austin, TX, 16-RC-10657, June 8, 2006 (Chairman Battista and Members Liebman and Walsh)

(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Regional Transportation Program, Inc. Portland, ME, 1-RC-22002, June 2, 2006 (Chairman Battista and Member Kirsanow; Member Walsh dissenting)

Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar, Evansville, IN, 25-RC-10335, June 7, 2006 (Chairman Battista and Members Liebman and Walsh)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

- Ampco System Parking, Denver, CO, 27-RC-8438, June 7, 2006 (Chairman Battista and Members Liebman and Walsh)
- Hearst-Argyle Television, Inc., (WMTW TV-8), Auburn, ME, 1-UC-835, June 7, 2006 (Chairman Battista and Members Liebman and Walsh)
- Blithesome Home, Inc., Detroit, MI 7-UC-588, June 7, 2006 (Members Kirsanow and Walsh; Member Schaumber dissenting)
- Fairmont General Hospsital, Inc., Fairmont, VA, 6-UC-472, June 7, 2006 (Chairman Battista and Member Kirsanow; Member Schaumber dissenting)
- Pitney Bowes Government Solutions, Inc., Aurora, CO, 27-RC-8440, June 7, 2006 (Chairman Battista and Members Liebman and Walsh)
